

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARMELLA A. MAYFIELD and DEPARTMENT OF DEFENSE,
SUPPLY LOGISTICS AGENCY, Philadelphia, Pa.

*Docket No. 97-852; Submitted on the Record;
Issued March 5, 1999*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant had any residuals of her January 21, 1992 lumbosacral strain injury after April 28, 1996, the date the Office of Workers' Compensation Programs terminated her compensation.

On January 21, 1992 appellant, then a 43-year-old clerk, injured her back while she was attempting to open a stuck file drawer. The Office accepted that appellant sustained lumbosacral strain/sprain with radiculopathy. Appellant had a preexisting back condition, for which she underwent L5-S1 disc excision surgery in 1987, and had another back injury in 1989.

Appellant returned to work on May 10, 1993 as a modified clerk for fours per day, but had a recurrence of disability on February 1, 1994 and stopped work again.

Throughout 1994, appellant's treating physician, Dr. John P. Salvo, a Board-certified orthopedic surgeon, continued to opine that appellant remained unable to work. In an April 20, 1994 report, he opined that she "continues to have [a] problem with the same thing that has troubled her in the past which is sciatic radiculopathy that is related to the disc herniation." He continued to diagnose a recurrent herniated lumbar disc and left sciatic radiculopathy.

The Office determined that a second opinion was required and by letter dated November 30, 1994 it referred appellant to Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon, for evaluation. By report dated December 22, 1994, he reviewed appellant's history and the medical records presented, discussed her symptoms, presented his examination findings, and opined that her January 21, 1992 episode should have subsided within three to six months, that her present symptoms were related to her original 1987 surgery and secondary scar tissue formation, that she had recovered from her January 21, 1992 work injury and that the residuals were on the basis of her prior surgery and prior injury.

The Office now determined that a conflict in medical opinion evidence existed between appellant's treating physician, Dr. Salvo, and the second opinion examiner, Dr. Didizian, and it referred appellant, together with the complete case record, statement of accepted facts, and questions to be answered to Dr. Randall N. Smith, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict.

By report dated November 1, 1995, Dr. Smith reviewed the medical records and appellant's history, discussed her current symptoms and testing results, noted the results of his physical examination, and opined in a complete, thorough and well-rationalized analysis that appellant had degenerative discogenic disease in the lumbar spine which was a chronic problem complicated by the scarring from the laminectomy. He opined that appellant could be working with limitations.

On December 12, 1995 the Office sought clarification from Dr. Smith regarding appellant's lumbar strain injury residuals.

By letter dated December 20, 1995, Dr. Smith concluded that appellant had a chronic problem, and that the 1992 work incident may have aggravated the situation, but that it had nothing to do with her present ongoing complaints and the discogenic problem which predated the employment injury, was just irritated by the 1992 incident.

On March 13, 1996 the Office issued appellant a notice of proposed termination of compensation finding that the weight of the medical opinion evidence of record supported that appellant had no residuals of her 1992 lumbar strain injury. The Office recommended termination of appellant's compensation.

In response appellant submitted a recent electromyograph (EMG) report demonstrating chronic L5 radiculopathy, a magnetic resonance imaging (MRI) scan showing degenerative disc disease and a possible left L4-5 disc protrusion, and a functional capacity evaluation demonstrating that appellant's current work capacity was below her normal work needs.

By decision dated April 30, 1996, the Office terminated appellant's compensation finding that the weight of the medical evidence of record supported that she no longer suffered residuals of her original 1992 work injury. The Office found that the well-rationalized report of the impartial medical specialist constituted the weight of the medical evidence in supporting that her current symptoms were related to the back injury and back surgery which predated her 1992 lumbar strain injury.

By letter dated August 9, 1996, appellant, through her representative, requested reconsideration, and in support she submitted a June 28, 1996 report from Dr. Salvo. He reviewed appellant's history and his findings, and reported that appellant's symptoms had certainly increased since 1992.

In an updated report dated August 28, 1996, Dr. Smith reviewed Dr. Salvo's report and the attached EMG and MRI findings and concluded that appellant had a chronic degenerative lumbar spine condition, that the work injury in 1992 caused lumbar sprain, but that her ongoing condition was a result of a degenerative process from the previous surgeries and back condition.

He opined that she had completely healed from the 1992 aggravation, and that her present complaints and disability were not related to the 1992 work injury, but were from the degenerative discogenic disease and its normal progression.

By decision dated November 5, 1996, the Office denied modification of the April 30, 1996 decision. The Office found that the weight of the medical evidence of record supported that appellant no longer suffered residuals of her 1992 lumbar sprain injury. The Office noted that Dr. Smith's report still constituted the weight of the medical evidence, and supported that appellant's current complaints were related to her preexisting discogenic disease and previous back surgeries.

The Board finds that appellant had no residuals of her January 21, 1992 lumbosacral strain injury after April 28, 1996, the date the Office terminated her compensation entitlement.

When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹

In this case, the Office properly determined that there existed a conflict in medical opinion evidence between Dr. Salvo, appellant's treating physician, and the Office second opinion examiner, Dr. Didirian, and properly referred appellant, together with a statement of accepted facts and the complete case record, to Dr. Smith for an impartial medical examination. In Dr. Smith's thorough and well-rationalized report and its two addenda, he found that although appellant did suffer from back problems, they were related to her preexisting discogenic disease and previous back surgeries and not to her 1992 accepted lumbar strain injury. He opined that she no longer suffered any residuals from the 1992 back strain injury and could return to limited work.

As Dr. Smith's reports were thorough and well rationalized, and were based on a complete and accurate factual and medical background, they must be accorded that special weight due to an impartial medical examiner selected to resolve an existing conflict. Therefore, his reports and conclusions constitute the weight of the medical opinion evidence of record and support that appellant is no longer suffering from any work-related injury residuals. Accordingly termination of her compensation was proper.

After termination of appellant's compensation, Dr. Salvo submitted an additional report. He reported his previous findings and concluded that appellant's condition had worsened since 1992. Dr. Salvo did not, however, identify appellant's worsening condition as lumbar strain, or relate it to her 1992 lumbar strain, but related her condition to discogenic disease and previous surgeries, which were not accepted employment-related conditions. Therefore, the substance of Dr. Salvo's report does not support that appellant has injury residuals related to her accepted 1992 soft tissue muscular strain injury. The Board further notes that, as this additional report merely repeats prior assessments and opinions, and as Dr. Salvo was on one side of the conflict

¹ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

that Dr. Smith resolved, his additional report is insufficient to overcome the special weight accorded Dr. Smith's opinion or to create a new conflict with it.²

Accordingly, the decisions of the Office of Workers' Compensation Programs dated November 5 and April 30, 1996 are hereby affirmed.

Dated, Washington, D.C.
March 5, 1999

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

² *Dorothy Sidwell*, 41 ECAB 857 (1990); *see also Helga Risor* (*Windell A. Risor*), 41 ECAB 939 (1990) (additional reports from Office medical adviser, who was on one side of a conflict resolved by an impartial medical specialist, could not be used as a basis for creating another conflict in medical opinion).